

1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF CALIFORNIA

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4 In Re:) Case No. 19-30088
5 PG&E CORPORATION AND PACIFIC) Chapter 11
6 GAS AND ELECTRIC COMPANY, ET) San Francisco, California
AL.) Wednesday, June 7, 2023
Debtor.) 11:00 AM
7)
8 ADV#: 23-03005
9 DAVID P. ADDINGTON v. PACIFIC
GAS AND ELECTRIC COMPANY, ET
AL.

10 REORGANIZED DEBTORS' MOTION
11 FOR SUMMARY JUDGMENT ON
12 CLAIMS OF DAVID P. ADDINGTON
13 AND REQUEST FOR RELATED
RELIEF FILED BY PG&E
CORPORATION [14]

14 TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

16 APPEARANCES (All present by video or telephone):
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1 SAN FRANCISCO, CALIFORNIA, WEDNESDAY, JUNE 7, 2023, 12:07 PM

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3 (Call to order of the Court.)

4 THE CLERK: Court is now in session. Calling the
5 matter of Addington v. PG&E Corporation.

6 THE COURT: All right. Good afternoon, gentlemen.
7 Appearances, please.

8 MR. RUPP: Good afternoon, Your Honor. Thomas Rupp of
9 Keller Benvenutti Kim on behalf of the reorganized debtors.

10 THE COURT: Mr. Addington, good afternoon.

11 MR. ADDINGTON: Good afternoon, sir. I'm David
12 Addington, and a claimant in the PG&E case.

13 THE COURT: I'm sorry about switching the time on you.
14 We ran late. Mr. Rupp I guess was probably following.

15 Okay. Under the order, you have twenty minutes. Mr.
16 Addington, Mr. Rupp, would you want to reserve a portion?

17 MR. RUPP: Thank you, Your Honor. I have a short
18 opening and would like to reserve the majority of my time for
19 rebuttal. Call it ten minutes, but I might stop before then.

20 THE COURT: All right. Go ahead.

21 MR. RUPP: Thank you, Your Honor. Once again, Thomas
22 Rupp of Keller Benvenutti Kim on behalf of the reorganized
23 debtors. As I've said, I'm only going to open with a short
24 opening. I believe our papers were clear on the issues and I
25 trust the Court does not want me to reread our briefs into the

1 record. But if we could spend thirty seconds to a minute on
2 how we got here, to this place.

3 Two years ago, we objected to Mr. Addington's original
4 claim. It was a claim based on his purported recording or his
5 actual recording of a purported termination of PG&E's easement
6 for the powerlines running across his property. We objected to
7 that claim. We attempted to mediate it from our court-approved
8 ADR procedures. The mediation was unsuccessful. And then we
9 proceeded with -- I'm not sure if it was technically a motion
10 for summary judgement, but a motion asserting that the claim
11 failed as a matter of law. We entered into a stipulated facts.
12 We briefed that issue and the Court ruled for PG&E and
13 disallowed Mr. Addington's original claim. As part of that
14 order, the Court gave Mr. Addington -- I believe it was sixty
15 days to amend his claim and --

16 THE COURT: You know what, Mr. Rupp, hold on. I
17 wonder if we lost Mr. Addington. Oh, no. Okay. There we are.
18 Okay. No, I saw -- go ahead. Go ahead, he's back. Or he
19 never left.

20 MR. RUPP: Thank you, Your Honor. As part of that
21 original order disallowing Mr. Addington's original claim, the
22 Court gave Mr. Addington sixty days to file a new claim based
23 on anything that occurred after the November 2016 release that
24 Mr. Addington entered into with the debtors regarding the work
25 done on his property in 2016.

1 Mr. Addington retained counsel. Filed an amended
2 claim. I engaged with counsel to attempt to resolve the claim.
3 However, we were on a deadline to file an objection and we did.
4 We filed an objection. Mr. Addington's former counsel and I
5 agreed to some informal discovery, at the Court's suggestion.
6 PG&E produced a volume of correspondence and other documents
7 that we had agreed to provide. And for Mr. Addington's part,
8 very little was provided regarding items that we requested that
9 would have supported his claim.

10 Nonetheless, towards -- I believe it was December
11 2022, Mr. Addington and his counsel parted ways and Mr.
12 Addington informed the Court that he would be amending his
13 claim further. Through more haggling and scheduling, we set a
14 new deadline. Mr. Addington filed an amended claim and not a
15 proof of claim, but papers seeking to amend his claim as well
16 as what was a complaint alleging new causes of action. We
17 stipulated to create this adversary proceeding where we would
18 hear everything in one go.

19 So that's where we are. We have filed this summary
20 judgment motion. And yet, in the meantime, Mr. Addington has
21 recorded a new notice of termination purporting to terminate
22 PG&E's easement on his property, which was included in our
23 papers. That's a very quick capsule summary, Your Honor. It's
24 all in the record. Plenty of documents, exhibits, status
25 conference statements. In the main case, just for the record,

1 19-30088 and this adversary proceeding.

2 Now, as Your Honor knows, a claim is a right to
3 payment under section 101 of the Bankruptcy Code. And Mr.
4 Addington has put forward nothing that would establish a right
5 to payment against PG&E. He has not advanced any material
6 facts, disputed or even undisputed, that would support a
7 coherent theory and contract tort or otherwise that would find
8 PG&E liable for any amounts to him.

9 Really quickly, as we have taken on his claims in our
10 motion for summary judgment, they fall into a few buckets. But
11 as a starting point, there's the release. The release was
12 entered into. Mr. Addington was compensated for it. And even
13 in his response or his opposition to our motion, he
14 acknowledges that he did release PG&E. Although he does argue
15 that this release was not total or he's protected by, I think,
16 Civil Code 1542. However, the release was specific as to the
17 agreement for work and it should be binding as to the work that
18 was done. After that --

19 THE COURT: Oh, by the way, there's a document in the
20 record, a November 4th document called Tower Maintenance Work
21 Acknowledgement Addendum that the parties signed. And then
22 November 14th, a letter that acknowledges payment of the money.
23 Those are the two documents together, the release, or am I
24 missing some other writing?

25 MR. RUPP: I believe that's them, Your Honor. They

1 were included in the original joint statement that --

2 THE COURT: Right, correct.

3 MR. RUPP: -- was agreed to by the parties. So there
4 was a --

5 THE COURT: That's where I got it. I actually went to
6 the joint statement yesterday, or when I was preparing, and I
7 wanted to make sure that I was getting the document. Okay.

8 MR. RUPP: Yes.

9 THE COURT: That's your position as to that was --
10 closed the books on what was dealt with before and my order
11 then said he can assert anything after that.

12 MR. RUPP: That's right, Your Honor.

13 THE COURT: Okay.

14 MR. RUPP: And with respect to what happened after
15 that, well, plenty of emails and correspondence have been
16 introduced into the record, mostly by Mr. Addington. But
17 looking through all of that, the record indicates the opposite
18 of what Mr. Addington is asserting. And all it shows is that
19 PG&E personnel continued to be responsive to him and work with
20 him up to a limit and try to address whatever new concerns he
21 had with his property. There isn't much there otherwise that
22 would point to any liability on PG&E's part. There isn't
23 anything at all, I should say.

24 Separately, and this was part of the new claims that
25 Mr. Addington has raised, is what we have termed the lamp claim

1 which Mr. Addington chose to affix one of his lamps and
2 energize it to one of the PG&E towers. And PG&E personnel gave
3 him advanced notice and removed it. As is their right under
4 the easement, they can patrol the towers, and it shouldn't be a
5 stretch to determine that given the equipment, given the
6 stakes, it's not unreasonable that third parties should not be
7 affixing lamps or anything else to a PG&E tower that supports
8 high voltage electrical transmission equipment.

9 THE COURT: But you somehow want me to sort of toss
10 that out, so they can fight it out later. I mean, you don't
11 really want to litigate that issue somewhere else, do you?

12 MR. RUPP: Well, the lamp issue, Your Honor, I mean, I
13 believe our position is that there's no claim there. The facts
14 that are presented by --

15 THE COURT: Okay.

16 MR. RUPP: -- Mr. Addington, there's nothing there
17 that indicates liability on PG&E's part.

18 THE COURT: Agreed. And I understand. But if I were
19 to say that and made an adjudication that he has no claim, then
20 that's an adjudication. But because I thought you were saying,
21 well, it was post-petition, therefore it's not part of the
22 claims process, that seems --

23 MR. RUPP: That's a separate claim, Your Honor.

24 THE COURT: Okay.

25 MR. RUPP: That's a separate claim.

1 THE COURT: All right.

2 MR. RUPP: And so I believe the lamp claims are in
3 2017, or thereabouts.

4 THE COURT: Okay. I'm sorry. I thought you were
5 talking about the more recent one. Excuse me.

6 MR. RUPP: And that's right where I'm going, Your
7 Honor. And the last sort of bucket of claims is the
8 post-petition claims. There was an event January 29th, 2019 --
9 a date Your Honor and I will remember forever -- and I believe
10 it was December 2nd, 2022. Even though it was eighteen hours,
11 or whatever, after PG&E filed its petition, it's post-petition.
12 And the argument that this is all part of some continuous
13 conduct by PG&E's part is unavailing. I don't think -- taking
14 everything Mr. Addington alleges is true, I don't think he
15 awoke that morning contemplating that he would be engaged in
16 some altercation with PG&E's contractors that day. So it would
17 not -- it would fail the fair contemplation test in the 9th
18 Circuit under SNTL.

19 Those are the claims. I can turn briefly to the
20 theories regarding the easement and the towers. I believe
21 we've briefed that very thoroughly in our opening and our reply
22 brief. And suffice it to say the Hornbook California law is
23 very clear on this. An easement is a right in real property.
24 And PG&E operates under its right in real property to have
25 these towers erected, maintained, and supervised that happened

1 to cross over Mr. Addington's property. So any argument of Mr.
2 Addington's that stems from the idea that he is the true owner
3 of the towers is unavailing and should fail outright.

4 THE COURT: And you don't want me -- but that being
5 said, you don't want me to do anything about the more recent
6 recorded easement?

7 MR. RUPP: Your Honor, we did ask in our opening brief
8 that the Court order Mr. Addington to remove or cancel the
9 termination or -- yes, the second termination I believe is what
10 we called it, so that was in our papers.

11 THE COURT: Okay. You believe that because he did it
12 subsequent to the bankruptcy, leaving aside the subsequent of
13 the bankruptcy, you believe it's inappropriate and the proper
14 remedy at this point is to order him to rescind it. Assuming
15 the record -- and whatever the record document can be. Right?

16 MR. RUPP: Your Honor, perhaps one way of thinking
17 about it is that Mr. Addington and PG&E came before this court
18 to decide the issue of whether he could terminate the easement
19 or not. The Court ruled that the easement was not terminated
20 and what he's done is essentially the same thing, to just
21 record a new notice of termination without really any
22 explanation or justification why this should be done. So I
23 guess we see it more as just a violation of the Court's May
24 16th, 2022 order, and so --

25 THE COURT: Well, it might be a violation of the

1 automatic stay, in which case you could file a motion for
2 contempt. But you're not doing that. I mean, what you want me
3 to do is to rule in the company's favor against Mr. Addington
4 across the board, including direct him to rescind the recorded
5 document.

6 MR. RUPP: That's our request, Your Honor.

7 THE COURT: Okay.

8 MR. RUPP: That's what we've asked for in our papers.

9 THE COURT: Okay.

10 MR. RUPP: And so I think I've covered everything very
11 quickly. Again, we have our papers and we've covered it pretty
12 closely. I did want to close that there may be a lot of
13 complaints that Mr. Addington has about PG&E. He may be
14 frustrated that they sort of have to like together under the
15 same roof, so to speak, with interlocking rights to this
16 stretch of the easement. But what has not been shown and what
17 there are no genuine disputes as to material fact about here
18 are that Mr. Addington does not have a claim in this bankruptcy
19 case.

20 THE COURT: Okay. You can reserve ten minutes and the
21 metaphor of being under the same roof is a stretch, under the
22 same powerlines.

23 MR. RUPP: Sure.

24 THE COURT: Mr. Addington, you have twenty minutes.

25 MR. ADDINGTON: Thank you, sir. Is that echoey? Can

1 you hear me fine?

2 THE COURT: No, no, it's fine. Yes, I can. Thank
3 you.

4 MR. ADDINGTON: Thank you.

5 MR. RUPP: So from the inception of my purchase of 298
6 Saint James, the reorganized debtors have acted and held the
7 same position that the easement is permanent and irrevocable.

8 THE COURT: No, no. Not irrevocable. It could be
9 mutually revoked, but you can't unilaterally -- or you didn't
10 unilaterally terminate it the way you purported to, so that's
11 the ruling that's been on the books for quite some time now.

12 MR. ADDINGTON: Yes, sir. I'm actually quoting the
13 reorganized debtors' counsel from the hearing, our first
14 hearing.

15 THE COURT: Okay.

16 MR. RUPP: When you asked him what he felt the status
17 of the easement was and he said the easement was permanent and
18 irrevocable.

19 THE COURT: Well, Mr. Addington, the point is, if you
20 and I -- if I owned the tower and you were on the house, you
21 and I could agree to terminate it. But what PG&E has taken
22 issue with is that your unilateral attempt to terminate was not
23 valid, and that was all I ruled.

24 MR. ADDINGTON: No, sir.

25 THE COURT: So let's leave it at that. Okay.

1 MR. ADDINGTON: Yes, sir. Yes, sir.

2 THE COURT: At the moment that's the rule, and so
3 let's get to what we're here today to -- if you have a proof of
4 claim.

5 MR. ADDINGTON: Yes, sir. And again, I'm not
6 disputing your ruling. I'm merely quoting the reorganized
7 debtors' position regarding the easement stated earlier in this
8 court.

9 THE COURT: Okay.

10 MR. ADDINGTON: Because I think that position is the
11 underlying basis for their actions in the case. If you believe
12 that the easement is, in fact, irrevocable and permanent, then
13 your actions regarding your interactions with me as a property
14 owner are far less guided than if they thought there was a
15 potential for termination.

16 THE COURT: Mr. Addington, the argument today is
17 whether you have asserted a claim against the company; that's
18 the issue. So it doesn't matter whether the easement is
19 irrevocable or could be revoked. It is what it is. And do you
20 have a claim for damages that the company needs to honor; yes
21 or no.

22 MR. ADDINGTON: Yes, sir.

23 THE COURT: And if the answer is yes, then you win.
24 If it's no, your claim will be disallowed. And I won't make a
25 ruling about whether the easement is irrevocable.

1 MR. ADDINGTON: No, I understand you.

2 THE COURT: Okay. Okay. So let's stick on that
3 point.

4 MR. ADDINGTON: I merely provided it as background.
5 The issue that I have presented in my papers is one of the
6 ownership of the real property, the towers. The definition of
7 real property in California or anywhere else is property that
8 is permanently affixed to the land, it is unmovable. And by
9 anyone's estimation, these towers are real property.

10 Now, Mr. Rupp raises in his brief the fact that an
11 easement is an interest in real property, and I agree with him
12 wholeheartedly it is, but it is not an ownership interest. The
13 ownership of real property is a separate entity in and of
14 itself. The easement is a grant from the owner of real
15 property for use of that property for some specific task. The
16 cases that he has quoted make very clear that the easement is
17 not ownership, but rather the right to use the property of
18 another.

19 THE COURT: So therefore, what? But come to therefore
20 what. You want me to say that you own the tower, and --

21 MR. ADDINGTON: Well, no, sir. While it would be
22 lovely for you to say it, there's no question but that I do own
23 the towers.

24 THE COURT: Okay.

25 MR. ADDINGTON: They are real property. And I own the

1 property at 298 St. James.

2 THE COURT: Okay. That's your position.

3 MR. ADDINGTON: Now, PG&E can have whatever interest
4 they may have in those towers. I am the property manager,
5 asset manager for a mall in Mexico. And we have long-term land
6 leases to Hampton Inn and Cracker Barrel. And Cracker Barrel
7 builds its own facility. But as soon as that stick is
8 permanent in the ground, it's real property. And although
9 Cracker Barrel has 100 percent rights for use of that real
10 property, the underlying ownership is not theirs.

11 THE COURT: But what does that have to do with a
12 situation that is governed by an easement?

13 MR. ADDINGTON: So I believe the easement situation is
14 exactly parallel.

15 THE COURT: Well, I understand that's what you
16 believe. But what does an ownership of a Cracker Barrel in
17 Mexico that has nothing to do with easements have to do with an
18 easement dispute here?

19 MR. ADDINGTON: So I mention it because it's far more
20 common, triple net lease real estate transactions are far more
21 common where the owner of the real property and the underlying
22 land is separate from the operator and of those improvements,
23 and --

24 THE COURT: But leases have nothing to do with
25 easements.

1 MR. ADDINGTON: I understand, sir.

2 THE COURT: Well, you keep -- you're arguing that
3 they're relevant, but they're not.

4 MR. ADDINGTON: Well, sir, the reason I think they are
5 relevant is just like in an easement, in a triple net lease
6 when the lessee -- or in this case the grantee -- takes a piece
7 of personal property and makes it into real property, the
8 ownership of the real property stays with the owner of the real
9 property. Of the real property. There are not -- it doesn't
10 create a separate ownership of real property. Their rights to
11 use that real property are governed in one case by the lease
12 and in the other case by the easement, or the terms of the
13 easement. But the ownership of those assets is not in dispute.
14 Real property is only owned by the owner of the real property,
15 and that's who is on title at 298 St. James.

16 And the reason that that results in a claim in the
17 Bankruptcy Court here, is PG&E has refused to acknowledge the
18 ownership of the towers. They claim that they own them. And
19 therefore as the actual owner, the property owner, my title is
20 slandered. I can't do what I wish. Now, PG&E has had a right
21 under the easement to use the towers, to maintain the towers,
22 to patrol the towers, as he has said. But those rights do not
23 rise to the level of ownership.

24 THE COURT: What if the Public Utilities Commission
25 came along and said these towers need to be replaced because of

1 their age? Who would have to replace them? You or PG&E?

2 MR. ADDINGTON: PG&E. Or I don't have --

3 THE COURT: Oh, but you own the towers.

4 MR. ADDINGTON: Yes, sir.

5 THE COURT: If the Public Utilities Commission says
6 these towers are a public nuisance because they're dangerous.
7 They're going to fall over. So property owner, replace them.
8 You would have a different answer at that point, I guess. Say
9 no. I don't have to. I'm the owner, but I'm not really the
10 owner for those purposes.

11 MR. ADDINGTON: Well, sir, I am. Just in the case --
12 same in the case with long-term real estate leasehold interest,
13 the owner of the real property assets, the Hampton Inn or the
14 physical Cracker Barrel or what have you, he can replace it or
15 not. But I'm not sure really what the California Public
16 Utilities Commission would require of me. But to the extent
17 they want to try to get me into the utilities business, I would
18 be willing to consider it. The reproduction of the towers
19 would be a fairly now expense. A little angle iron. I imagine
20 we could put them up pretty quick. But I don't think that's
21 really your point. Your point is --

22 THE COURT: My point is, sir, do you have a claim for
23 damages.

24 MR. ADDINGTON: Yes, I understand, so --

25 THE COURT: And you haven't -- Mr. Rupp made the point

1 that you haven't demonstrated any yet.

2 MR. ADDINGTON: Well, I agree, sir. And I'm trying to
3 get to that point.

4 THE COURT: Okay. Let's get right to it.

5 MR. ADDINGTON: And Mr. Rupp and PG&E, by claiming the
6 ownership of the towers where they do not have ownership have
7 slandered my title. And in slandering the title, they have
8 clearly violated the terms of the easement and in violation of
9 the -- in violating the terms of the easement it, by Your
10 Honor's own words, becomes -- let's see what you said here --
11 it self-destructs. And I have provided a notice of that
12 self-destruction. I have provided a case that I think supports
13 the idea that an easement with a self-destruction clause is
14 valid and operatable, in the SeaGals (phonetic) case. And I've
15 provided recorded notice, which I believe was in keeping with
16 your earlier ruling.

17 I did not terminate the easement. The termination of
18 the easement happened of its own accord, and I provided a
19 notice of that termination. And from the date of that
20 termination forward, PG&E is in trespass on my property. And
21 in trespass, I have -- California law allows me to collect a
22 variety of damages, among which are any funds or earnings that
23 someone may have made through the trespass. Compensatory
24 damages. I can pull it out, I suppose, if it's necessary. But
25 those are my damages that I am attempting to collect that would

1 be pre-petition.

2 THE COURT: So what are they? Can you quantify them?

3 MR. ADDINGTON: Well, sir, no, sir. I can't without
4 discovery.

5 THE COURT: Well, who would you take the discovery
6 from?

7 MR. ADDINGTON: Pardon?

8 THE COURT: Well, if you knew that you could replace
9 the towers, why couldn't you estimate your own damages? What
10 are the damages that you have suffered because of this
11 trespass?

12 MR. ADDINGTON: Sir, the damages that I can collect
13 from trespass are the damages equal to the earnings or the
14 trespasser during that period of time. So I need to ask PG&E
15 how much money has been attributable to the trespass. There's
16 a question of whether it would be a hundred percent of the
17 revenues, subject to substation 10 or just, for instance, the
18 portion of the tariff attributed to low voltage distribution.
19 But those are questions that I can't answer because it's
20 information that only PG&E has.

21 THE COURT: Okay. We have time. Anything else?

22 MR. ADDINGTON: Nope. So the idea that the towers --
23 I'm not sure. I haven't heard an argument that the towers are
24 not real property. I think buried in concrete, it's one of the
25 very first discussions in law school real estate class.

1 They're buried in the dirt. They're immovable. They're
2 intended to be permanent. They're real property. And as such,
3 the real property is owned by the owner of the real property;
4 in this case, it's me. PG&E has had, I would argue, an
5 interest in that real property through the easement. But
6 through this and many other actions, they've violated the terms
7 of the easement.

8 And the lamp issue which Mr. Rupp has brought up I
9 think is important not because it is a claim in and of itself,
10 but because it is an indication of PG&E's position that the
11 easement is permanent and irrevocable. Because my neighbor
12 called and complained, they came into my yard and took the
13 thing down. Now, whether I own the towers or PG&E own the
14 towers, they are by the terms of the easement supposed to be
15 doing everything reasonably possible to avoid interference in
16 my land use.

17 Now, is it impossible to allow my twelve-by-twelve
18 tower to sit wedged in the legs of this -- or twelve-by-twelve
19 light to sit wedged in the legs of the tower? Of course it's
20 possible. Now, is it somehow a health and safety risk that has
21 to be avoided? Well, that's patently ridiculous. You need
22 only look to the tower one to my north and you'll see it is
23 festooned with electronics, except those electronics are owned
24 on a tower -- PG&E owns the dirt and is collecting money from
25 the attachments, so.

1 THE COURT: So but it sounds to me like what your
2 argument is that since you own the tower, you can put a light
3 on your tower.

4 MR. ADDINGTON: Well, I would say without question I
5 can put a light on my tower. And I'm even conceding saying if
6 they own the tower -- which they don't and can't, but if they
7 did, they would still be obligated to do everything reasonably
8 possible to avoid interference in my land use.

9 THE COURT: But who says that that falls within the
10 reasonable use?

11 MR. ADDINGTON: Well, I would say if you look at the
12 tower immediately to the west of us -- or to the east of us,
13 where this tower is physically connected, you would see that it
14 is festooned with electrified objects wrapping --

15 THE COURT: But it's their tower. But it's their
16 tower. You don't claim any ownership in that tower, so what
17 difference does it make? This is about like the Cracker Barrel
18 in Mexico. What difference does it make?

19 MR. ADDINGTON: Well, sir, PG&E's claim is that the
20 attachment of an electrified device causes some great danger.
21 And yet the tower, the very next tower -- which they do own and
22 they own the dirt -- they've attached these items to that tower
23 and somehow they're not a health hazard. And the reason is
24 because on those they're making money and on mine they weren't.
25 But is it reasonably possible they could have allowed it? Is

1 it somehow an actual danger? It's simply not. I realize
2 electricity is dangerous and people are scared of it. But just
3 because PG&E says it's a danger doesn't make it so.

4 THE COURT: Okay. Let's try a different approach. If
5 you believe you had a right to put the light there and they
6 took it down, what are the damages for not being able to have
7 the light hanging on the tower?

8 MR. ADDINGTON: Well, sir, the damages go back to the
9 terms of the easement. Are they doing --

10 THE COURT: But wait a minute. You said it's one
11 little light that you placed on the tower.

12 MR. ADDINGTON: Yeah, it is.

13 THE COURT: Well, so what are the damages? Quantify
14 them for me. Are we talking about 100 dollars or 200 dollars
15 or 500 dollars? We're not talking about millions of dollars
16 for a light hanging on the tower, are we?

17 MR. ADDINGTON: Well, sir, what we're talking about is
18 the terms of the easement specify that a violation of the
19 easement results in its termination, it doesn't --

20 THE COURT: Mr. Addington, you're not answering my
21 question.

22 MR. ADDINGTON: Okay.

23 THE COURT: You're supposed to quantify the damages
24 that you have suffered after you signed the documentation in
25 2018.

1 MR. ADDINGTON: Yes, sir.

2 THE COURT: I'm sorry, 2016.

3 MR. ADDINGTON: And I've told you --

4 THE COURT: So you put the light up there after that,
5 right?

6 MR. ADDINGTON: Yes, sir.

7 THE COURT: Okay. And then they took it down.

8 MR. ADDINGTON: Yes, sir. Yes, Your Honor.

9 THE COURT: So what are the economic damages for that
10 conduct?

11 MR. ADDINGTON: The economic damages for that conduct
12 are unknown.

13 THE COURT: Okay. Then why should I allow a claim for
14 them?

15 MR. ADDINGTON: Sir, you shouldn't allow a claim for
16 that conduct.

17 THE COURT: Okay.

18 MR. ADDINGTON: You should allow the terms of the
19 easement which say if they do these behaviors -- the easement
20 was written in such a way, it doesn't say, hey, do anything you
21 want, get away with it, and there's no problem. It says if --
22 you are held to a fairly high standard, you have to do
23 everything reasonably possible to avoid interference. And for
24 an easement -- an easement is like the gold standard of real
25 estate assets. It allows PG&E the use of real property at no

1 cost in perpetuity. And all they have to do, in the case of
2 our easement, is not act like a jerk. And if you do act like a
3 jerk, you lose the easement.

4 And when you come into my yard at the request of my
5 neighbor and take down a light and then five years later are
6 still claiming that this is somehow some great health and
7 safety risk because it's an electrified object on a high
8 voltage tower, it just doesn't bear scrutiny, it's just
9 nonsense. And this is -- you ask what the damages are. This
10 is the fifth year I've been talking about this.

11 THE COURT: Well, that doesn't make it -- that doesn't
12 mean you're right, so that could make -- so the neighbor says
13 we don't like that light on the PG&E tower, so do something
14 about it, and so PG&E takes the light down. And you therefore
15 say therefore, they should lose their easement?

16 MR. ADDINGTON: Well, no, sir. I think that I'm
17 mentioning these things because I wanted Your Honor to see the
18 totality of their actions because their actions always support
19 their position that the easement is permanent and irrevocable.
20 And if that is their position -- and that is certainly the
21 actions, the way they have acted, then my value of my property
22 is significantly diminished. My ability -- my only recourse
23 under the easement is the recording of the termination and
24 extinguishment.

25 I have asked the reorganized debtors for an

1 opportunity to have the Court explain to me how the easement
2 should work. We've asked for declaratory relief. The
3 reorganized debtors have said no. We're not going to allow it.
4 We don't want to have it. I've asked for a quiet title. The
5 reorganized debtors say they don't want to have it. So I'm
6 left to read it and make an interpretation based on your prior
7 ruling. I've done that. The easement, I believe, is
8 terminated and they owe money for the period of trespass. I
9 cannot determine the amount until I have discovery.

10 THE COURT: Okay. All right. Mr. Rupp, you have ten
11 minutes to reply.

12 Thank you, Your Honor. I'll try to be quick. I don't
13 have the transcript in front of me from that particular
14 hearing, but as to permanent and irrevocable, this particular
15 easement was created by a grant from a grantor -- Something
16 Something Land Company I believe it was called -- to Great
17 Western Power, PG&E's predecessor.

18 So the grant was permanent in the sense that it was
19 not for a term of years -- ninety years, a hundred years, what
20 have you -- and it was irrevocable in the sense that the
21 grantor cannot unilaterally revoke the grant of the easement
22 and terminate it by his or her or itself. It exists. It
23 exists in perpetuity. Could the parties agree to terminate it
24 or modify it in some other way? I assume so. If PG&E did act
25 in a manner inconsistent with the easement, that would justify

1 its termination under its terms; that's possible as well.

2 But moving on, Your Honor hit it exactly on point
3 where Mr. Addington, in arguing that he owns the towers wants
4 the benefits of ownership without the rights and duties -- or
5 the duties and obligations of ownership. He would not -- says
6 he would not be responsible for fixing the towers or if God
7 forbid a tower -- somehow a third party was injured by one of
8 the towers, I don't believe Mr. Addington would think he was
9 liable for such an event.

10 The case about easement termination, the Flock of
11 SeaGals (phonetic) case, another case with a good name, but
12 it's not apposite here. It involved an actual change, a
13 material change in the use of that easement. I believe it was
14 an easement across county land or an easement by a county for
15 access, and then the county changed it to picnicking and
16 sunbathing, and that was found to be a material change. But
17 again, I believe that's a case from the southeastern United
18 States somewhere, I don't have it right in front of me. But
19 not apposite to these circumstances, PG&E has an easement for
20 powerlines. It operates those powerlines. It maintains those
21 powerlines and patrols them.

22 With respect to the lamp claim, I believe in one of
23 the photos submitted by Mr. Addington, he submitted a photo of
24 the lamp. And it is, in fact, affixed to I think one of the
25 lowest crossbeams of the tower, if I'm thinking of that photo

1 right. And it's not a question of avoiding unreasonable
2 interference with Mr. Addington's use of the property, it's the
3 tower that belongs to PG&E. Mr. Addington clearly disagrees,
4 but from PG&E's point of view, the tower belongs to PG&E and so
5 someone affixing items, especially energized equipment, to the
6 towers is not acceptable. I cannot speak for the tower down
7 the street that Mr. Addington is referring to, but I would
8 venture that those other items are not affixed to the tower
9 without PG&E's agreement or participation in that.

10 THE COURT: Well, sure. He's commented that
11 apparently -- I haven't seen them, but apparently, PG&E is
12 letting somebody else put some cell towers, cell relay stations
13 or something, so it's generating revenue. And which is what
14 one can do when one owns a tower. Maybe he could do it if he
15 owned the tower.

16 MR. RUPP: Right.

17 THE COURT: But that's not the point.

18 MR. RUPP: Perhaps so, Your Honor. And then back to
19 the tower argument of ownership of the towers. This is not a
20 lease. This is an easement. An easement is not a fee interest
21 in a property. It is not ownership of land. But it is a right
22 to use real property. The cases we've cited speak about an
23 easement being a right in real property. So whether that
24 easement is for powerlines, a road, railroad tracks, sewer
25 pipelines, what have you, there are many examples, those are

1 real property rights that those easement holders have to the
2 real property that their items traverse.

3 THE COURT: But I think we learn in first year of
4 property class that if you take something that's movable and
5 you put it into the ground so it's permanent, it becomes part
6 of the land. I think the seminal case has to do with a bank
7 that put a safe underground somewhere over on Market Street,
8 and so it became affixed because it wasn't removable. But that
9 has nothing to do with easements. I mean, I assume that these
10 towers are removable at some great expense, but that isn't the
11 point, is it? They, I mean --

12 MR. RUPP: I don't think it is the point, Your Honor.

13 THE COURT: Okay.

14 MR. RUPP: And I think an easement -- again, an
15 easement is a right in real property. So the grantor says to
16 the grantee you can erect these powerlines into the earth
17 across my property because that's the only way I know how to
18 fix powerlines. I guess you can underground them. But they
19 can't just float without towers. So it is a right in a real
20 property that is enjoyed by the grantee, in this case PG&E. So
21 it doesn't mean necessarily that the towers themselves are the
22 property of the grantor. They're the property of the grantee,
23 but the grantor has given the grantee the rights to put those
24 towers on the property.

25 THE COURT: Okay. All right. The matter is going to

1 stand submitted. I've honestly been living this case as long
2 as you have, Mr. Addington and Mr. Rupp, at least in the
3 bankruptcy. Not since Mr. Addington has finally moved in, but
4 it's been here for a long time. I'm going to review the papers
5 again and reflect on the arguments and I will issue a written
6 decision in due course.

7 So thank you for your time. The matter stands
8 submitted.

9 MR. ADDINGTON: Thank you, Your Honor.

10 MR. RUPP: Thank you, Your Honor.

11 THE COURT: Okay. Thank you both. I'm going to
12 conclude our Zoom hearing for the day.

13 (Whereupon these proceedings were concluded at 12:48 PM)
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C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ COLIN RICHILANO, CDLT-252

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Date: June 8, 2023

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